IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHARTERED ACCOUNTANTS REFERENCE NO.1 OF 1999

The Institute of Chartered Accountants of India, a Statutory Body, incorporated under the provisions of the Chartered Accountants Act, 1949 and having its office at Indraprastha Marg, New Delhi - 110 002 .. Petitioner.

V/s.

H.S. Ghia of Mumbai Indian Inhabitant, stated to be a Chartered Accountant and carrying on his profession in the firm name and style of Messrs H.S. Ghia & Company as its sole proprietor and having its office at 98, Atlanta, 9th Floor, 209, Nariman Point, Mumbai 21 .. Respondent.

Dr.Virendra Tulzapurkar, Senior counsel with Ms.S. Srikrishna i/b. Kanga & Co. for the petitioner.
Mr.U.T. Yadav with S.S.Pakale for Union of India.
None for the respondent.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 11TH AUGUST, 2004.

ORAL JUDGMENT (Per R.M. Lodha, J.) :

. Shri H.S. Ghia is a Chartered Accountant

in practice and a member of the Institute of Chartered Accountants of India. For the sake of convenience we shall refer Shri H.S. Ghia as 'the respondent'. One Shri N.N. Sayani (hereinafter referred to as 'the complainant') filed a complaint before the Council of the Institute of Chartered Accountants of India under Section 21 of the Chartered Accountants Act, 1949 (for short 'the Act of 1949') against the respondent on April 4, 1991.

2. According to the complainant the respondent agreed to sell his premises 'Prabhu Niwas', 148, Vittalbhai Patel Road, Bombay - 400 004 for a total consideration of Rs.3,00,000/-. The complainant is said to have paid Rs.2,00,000/- and balance of Rs.1,00,000/- was paid by his mother. The respondent, however, failed to sell the said premises and property to the complainant and returned the consideration of Rs.3,00,000/- in the month of August, 1990 under six cheques for Rs.50,000/- each (four in favour of the complainant and two in favour of the mother of the complainant). The said cheques, on presentation, were dishonoured and despite legal notices, the respondent failed to pay the amount for which a criminal case was also registered against the respondent. The complainant also alleged that since

the respondent was a Chartered Accountant and Director of a Company M/s. Vastukala Construction Pvt. Ltd., he had faith and trust in him. The complainant alleged that from this company, the complainant had agreed to purchase three flats in the complex Mahabalipuram at Baroda vide three agreements executed by the respondent on behalf of the company in January, 1989. Thereafter, the complainant had come to know of certain newspaper reports stating that the respondent had committed serious criminal offence, breach of trust and cheating and the respondent was arrested and the criminal case was pending against him before the Chief Metropolitan Magistrate, Baroda. The complainant thus alleged that the respondent was guilty of professional and/or other misconduct. Upon complaint being forwarded to the respondent, he filed written statement to which rejoinder was filed by the complainant. The Council being prima facie of the opinion that the respondent was guilty of misconduct decided to cause an enquiry to be made by the Disciplinary Committee. The Disciplinary Committee held its meetings and though the notice of hearing was served upon the complainant, he chose not to appear before the Disciplinary Committee. The Disciplinary Committee called for certain clarification from the respondent

but no response is said to have been received from him. The Disciplinary Committee held that the respondent was guilty of 'other misconduct' as per the Code of Conduct of the Institute and forwarded its report to the Council. The Council concurred with the finding of the Disciplinary Committee and recommended to this Court that the respondent be reprimanded. This is how this reference has been placed before us under Section 21(5) of the Chartered Accountants Act, 1949.

3. The Council of the Chartered Accountants of India has initiated ethical principles for the Chartered Accountants. The said ethical principles enunciated by the Council are reflected in the Code of Conduct published by the Institute. The Code of Conduct recognises that the objectives of the accountancy profession are to work to the highest standards of professionalism, attain the highest level of performance and generally to meet the public interest requirements. The conduct of the Chartered Accountant even outside the profession has to be befitting the profession to which he belongs. The ethics of a Chartered Accountant require that his conduct to the members of public has to be credible and maintaining the confidence that the public

recognises him as a Chartered Accountant. Not only that the ethical standards of a Chartered Accountant regulating his relation in public, employers, employees, fellow members of the Institute must be befitting the profession to which he belongs but also his conduct in public generally must also have that standard.

4. Without multiplying the authorities, we may straight away refer the recent decision of the Supreme Court in the case of Noratanmal Chouraria V/s. M.R. Murli [(2004) 5 Supreme Court Cases 689], wherein the professional misconduct of an advocate under the Advocates Act, 1961 was examined. The Supreme Court considered the aspect of misconduct in para Nos.7,8,9,10,11,12 and 13 thus :

> "**Misconduct**
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> 7. Misconduct has not been defined in the Advocates Act, 1961. Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behaviour, intentional wrongdoing or deliberate violation of a rule or standard of behaviour".
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> 8. Misconduct is said to be a transgression of some established and definite rule of action, where no

discretion is left except what necessity may demand; it is a violation of definite law.

9. In Delhi Cloth & General Mills Co. Ltd. v. Workmen Shah, J. stated that misconduct spreads over a wide and hazy spectrum of industrial activity; the most seriously subversive conducts rendering an employee wholly unfit for employment to mere technical default covered thereby.

10. This Court in State of Punjab v. Ram Singh, Ex-Constable noticed: (SCC pp. 57-58, paras 5-6)

> "5. Misconduct has been defined in Black's Law Dictionary, 6th Edn. at p.999 thus:
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> > 'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.'
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> Misconduct in office has been defined as:
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> > 'Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office - holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.'
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> Aiyar P.Ramanatha: Law Lexicon, Reprint Edn., 1987, at p. 821 defines 'misconduct' thus:

‘The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but definite rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour of neglect by a public office, by which the rights of a party have been effected.’

> 6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the deliquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

(See also Prabodh Kumar Bhowmick v. University of Calcutta and B.C. Chaturvedi v. Union of India).

11. Section 35 of the Advocates Act, however, refers to imposition of punishment for professional or other misconduct. A member of the legal profession which is a noble one is expected to maintain a standard in a dignified and determined manner. The standard required to be maintained by the member of the legal profession must be commensurate with the nobility thereof. A lawyer is obligated to observe those norms which make him worthy of the confidence of the community in him as an officer of the court. This Court in Bar Council of Maharashtra v. M.V.Dabholkar observed

(SCC p.300, para 20)

> "The high moral tone and the considerable public service the Bar is associated with and its key role in the developmental and dispute - processing activities and, above all, in the building of a just society and constitutional order, has earned for it a monopoly to practise law and an automony to regulate its own internal discipline."

12. Although the power of the Bar Council is not limited, the thrust of charge must be such which would necessitate initiation of disciplinary proceedings. A professional or other misconduct committed by a member of the profession should ordinarily be judged qua profession. To determine the quantum of punishment which may be imposed on an advocate, the test of proportionality shall be applied which would also depend upon the nature of the acts complained of. No universal rule thus can be laid down as regards initiation of a proceeding for misconduct of a member of the profession.

13. In 'M', an Advocate, Re however, this Court emphasised the requirement of maintaining a high standard stating: (AIR p.163, para 14)

> "As has been laid down by this Court in 'G' a Senior Advocate of the Supreme Court, Re the Court, in dealing with cases of professional misconduct is 'not concerned with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status, are subject to certain disabilities which do not attach to other men and which do not attach even to them in a non - professional character... he (a legal practitioner) is bound to

> conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action'."

5. The relationship of the complainant and the advocate in the case before the Supreme Court was that of tenant and landlord. According to the complainant, the advocate-landlord had initiated Rent Control proceedings against him. While the Rent Control proceedings were pending in the Small Causes Court, the advocate-landlord committed misconduct by the following acts of omission and commission; i) On 8-10-1993 when the complainant came out of the court hall after attending the appeal pending therein, the advocate-landlord came from behind and hit him on his back and ran away; ii) On 26-10-1993 while the complainant was coming out of the court hall, the advocate-landlord accompanied by some rowdy elements threatened to kill him. The matter was alleged to have been reported to the police on same day, and iii) On 1-3-1995 during the lunch racess while the complainant was leaving the court hall along with his advocate Shri S. Vijayranjan, the advocate-landlord kicked him on the knee of his left leg in the

courtroom with an intention to cause injury and further asked him not to appear in the court for evidence. The Disciplinary Committee of the Bar of Tamil Nadu upon receipt of the complaint initiated disciplinary proceedings against the advocate and the matter ultimately stood transferred to the Disciplinary Committee of Bar Council of India. The Disciplinary Committee of Bar Council of India did not find the incidence reliable and also observed that the advocate appeared in the said litigation not as an advocate but as a litigant in person. The complainant carried the matter to the Supreme Court and in the backdrop of the legal position as noticed above, the Supreme Court held that the findings of the Bar Council cannot be said to be irrational meriting inferance and accordingly, dismissed the appeal.

6. The legal position highlighted by the Supreme Court in the case of Noratnmal Chouraria (cited supra) if applied to the facts of the present case, it would be seen that the complainant did not appear before the Committee nor did he lead any evidence to substantiate the charges before the Disciplinary Committee. We are afraid for want of any evidence worth the name having been led by the

complainant in support of the complaint and the charges levelled against the respondent, there was no justification for the Disciplinary Committee in holding that the respondent was guilty of 'other misconduct'. In the given facts of a case if the Chartered Accountant indulges in a criminal act in as much as issues the cheques knowing it fully well that the cheques will bounce on presentation for insufficiency of funds, and that is proved in inquiry, it may be said that the Chartered Accountant conducted himself in a manner not befitting the member of the Institute but not in a case like this where the complainant does not lead any evidence before the Disciplinary Committee to substantiate the charges. When the complainant failed to lead any evidence nor did he present himself before the Disciplinary Committee, we are afraid the Disciplinary Committee seriously erred in looking to the complaint and the annexures annexed therewith as gospel truth proving the charges. Even if the respondent failed to produce some material called for by the Disciplinary Committee, that would not lead to the inferance that the charges against the respondent were proved. As a matter of fact the respondent before the Disciplinary Committee drew the attention that the complainant was not appearing and he did not

lead any evidence to substantiate the charges and that rendered the charges unproved, the Disciplinary Committee brushed aside the contention of the respondent on unsustainable grounds that the respondent did not submit any documentary evidence in support of his submission. Where was the necessity for the respondent to produce the documentary evidence in support of his defence when the complainant did not choose to appear before the Disciplinary Committee nor did he lead any evidence to prove the charges.

7. In our view the charges against the respondent were not proved by the complainant and, therefore, the respondent could not have been held guilty of ‘other misconduct’.

8. We, accordingly, decline to accept the findings of the Disciplinary Committee and that of the Council that the respondent was guilty of ‘other misconduct’.

9. The complaint stands dismissed.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)